IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT
THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 1488 of 2003

Between:
M.A.Muheed, s/o. Md. Aklber, Ex.-Constable(GDCRPF),
R/o. 2-1-10, Yellareddy, Nizambad dist.

..... PETITIONER

AND

1) Commandant 63, Battalion Additional DIGF,
Group Centre, CRPF, Hyderabad.

2)Additional Inspector General of Police,
CRPF Pallipuram, Trivendram, Kerala-695316.

3)Commandant 63, Battalion CRPF, c/o. Head Quarters,
PH & HP (i), Sub-area, Ambala, Haryana

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a direction, writ or order, one in the nature of Writ of Mandamus (a) declaring the action of the respondent no.3 in not giving a notice before discharging him for the duties through office order No. P.III5/2002-63-EC.II, dated 18th October, 2002 is against the principles of natural justice; (b) to declare the action of the respondent in not considering the petitioner for any other duties in the department other than combatant duties is arbitrary and illegal; and the petitioner may be given all consequential benefits including service and arrears of salary.

Counsel for the Petitioner:MR.M.RAMA RAO

Counsel for the Respondents : Smt. A.P. Lakshmi, Addl.CGSC.

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 1488 of 2003

O R D E R :

Heard Sri M.Rama Rao, learned counsel appearing for the petitioner and Smt. A.P. Lakshmi, learned Additional Central Government Standing Counsel appearing on behalf of the respondents.

The short question which arises for consideration in this case is as to the applicability of the provisions of The Persons with Disabilities (equal opportunities, protection of rights and full participation) Act, 1995 (for short, 'the Act'), in respect of Central Reserve Police Force employees.

The facts in the back drop are that the petitioner was appointed as Constable (GD) as per the proceedings dated 13.07.1993 and he was being transferred to various places and ultimately at the relevant point of time, he was working in the office of the 63 Battalion, CRPF, Hanmakonda, Warangal district. However, according to him, he was admitted in MGM Hospital, Warangal and subsequently shifted and admitted in CRPF Base/Group Hospital, Chandrayanagutta, Hyderabad on 01.02.2002 and discharged on 14.03.2002. It was diagnosed that he was suffering from Schizophrenia unspecified. Once again, he was admitted on 29.04.2002 with relapse of Schizophrenia and discharged on 04.05.2002. Doctors

advised in the discharge slip that he may perform sedentary duties till he is invalidated. As per the letter dated 27.04.2002, the concerned Commandant referred the petitioner to the Chief Medical Officer, BH.II CRPF, Hyderabad for review of the present condition. However, there was no such intimation forthcoming from the said medical officer. Thereafter, he was sent to Ambala along with Battalion and discharging his duties. However, a notice dated 12.09.2002 was served on him giving him one month time for submission of any representation on the opinion of the medical board, which stated that the petitioner was not fit to perform the duties in CRPF as he is not fit for combatant active duties and therefore, he should be boarded out of service. According to the petitioner, this is totally something new and contra to what has exactly been stated at the time of discharge earlier on 04.05.2002. Therefore, the petitioner expressed his shock over the opinion of the medical board as per the said proceedings dated 23.08.2002 and it is not proved on what basis such opinion has been arrived at, since the petitioner was neither examined nor had any opportunity. Basing on such opinion, the third respondent passed orders on 18.10.2002 discharging the petitioner from service on the ground of medical invalidation. However, the petitioner complains that his entitlement under the Act has not been considered. Therefore, according to the petitioner, he is amply fit to discharge the sedentary duties and so, the respondents should have as well provided him with any such post other

than combatant. Hence, the Writ Petition.

In the counter affidavit filed on behalf of the respondents, it is stated that the petitioner is a patient of chronic psychiatric illness and he has been under treatment from 28.04.1995 at Base Hospital-I, CRPF, New Delhi and there was no improvement. It was pointed out that the disease seems to be hereditary. His mother was also a psychiatric patient and suffering from diabetes and hypertension and took treatment for the same. The petitioner had 2 to 3 episodes of psychiatric disorder since 1995 during which he used to turn hostile and on one occasion, he assaulted his wife. Therefore, he was observed as an aggressive and suspicious person with tendency to run away excited with increased psychomotor activity and lack of insight. The Chief Medical Officer concerned diagnosed him as a case of Schizophrenia with acute exacerbations in between with minimal residual deficit during which he was able to perform duties. Having regard to the same, the Psychiatrist, as per the opinion given on 04.05.2002, found that the petitioner is unfit in CRPF as Combatant and he should be taken up for medical invalidation. Therefore, a medical board was constituted as per the proceedings dated 12.08.2002, 19.08.2002 and 22.08.2002, which after enquiry, recommended for invalidation of petitioner from service by declaring him to be unfit for service in CRPF as Combatant. On the basis of the same, a notice was issued

to the petitioner along with the extract of medical opinion dated 12.09.2002. Since no other material is forthcoming, the impugned orders were passed invalidating the petitioner from service on 18.10.2002. The petitioner is fully aware of all these chequered events wherein he was held to be unfit and so, the question of allotting him sedentary duties in CRPF does not arise. Further, provisions of the Act are not applicable in view of the Notification No. 16-39/2002-WL, issued by the Ministry of Social Welfare and Empowerment, Government of India, published in Extraordinary Gazette of India Part II Section 8 of sub-section (ii) dated 10.09.2002, exempting all categories of posts of Combatant personnel of Central Paramilitary Forces including CRPF from the application of the said provisions. In view of the same, the petitioner can not seek any benefit thereunder. Hence, there is no force in the Writ Petition and the same is liable to be dismissed.

Considering the submissions made and on perusal of the material, it is to be seen that there is no serious dispute in regard to the petitioner's employment with the respondents and also in regard to his admission to medical board on more than one occasion for the Schizophrenia. Though at one stage, it is stated that he is fit for Combatant duties and subsequently, it was opined that he is unfit for Combatant duties in CRPF. CRPF consists of Combatant personnel and the petitioner's appointment itself is a Combatant. The petitioner also did

not come out with any other post available with the CRPF with sedentary duties. Even otherwise, having regard to the opinion which has been expressed by an expert body, this Court can not go into it and come to any different conclusion, and such opinion is clearly disentitled the petitioner to remain in service, more so with the functionaries like Combatant. The plea of petitioner that he should be given a sedentary duty or an alternative posting of lesser cadre, could not possibly be acceded to having regard to the fact that the very force is a Combatant force and no post as such can be said to be available in it. Even on a reading of the Act, though some protection is sought to be given in respect of such personnel in all other services, but the same has now been stood exempted by the notification of Government of India as aforesaid. In view of the same, it has to be held that provisions of the Act have no application nor can come to the aid of the petitioner in any manner. In the circumstances, it is to be held that the impugned orders of discharging the petitioner from duties are not vitiated nor are liable to be set aside on any ground. I do not find any merits in the Writ Petition and the same is liable to be dismissed.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao, J.)

15.02.2005
DRK

Copy to:

1) Commandant 63, Battalion Additional DIGF,
Group Centre, CRPF, Hyderabad.

2)Additional Inspector General of Police,
CRPF Pallipuram, Trivendram, Kerala-695316.

3)Commandant 63, Battalion CRPF, c/o. Head Quarters,
PH & HP (i), Sub-area, Ambala, Haryana

4) Two CD copies.